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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st February 2009

No. 1791-1i/1-(B)-17/2009(Pt.)/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 3rd February, 2008 in I.D. Case No. 195 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of M/s. Guru Gouranga Press, C/o. ISCON, Nayapalli, Bhubaneswar and their workman Shri Akshaya Kumar Sahoo was referred for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, : BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 195 OF 2008

Dated the 3rd February 2008.

Present:

Shri P. C. Mishra, O.S.J.S. (Sr.Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between:

The Manager,
M/s. Guru Gouranga Press,
C/o. ISCON, Nayapalli,
Bhubaneswar. ... First-Party —Management.

And

Shri Akshaya Kumar Sahoo,
 S/o- Shri Bhramarbar Sahoo,
 Plot No. N/5-127, Jayadev Vihar,
 P.O.: I.R.C. Village,
 Bhubaneswar. Second-Party — Workman.

Appearances :

Shri P. K. Chand,
 Advocate. For First-Party — Management

Shri Sudarshan Mohapatra,
 Authorised Representative. For Second Party—Workman

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 11848-li/1(B)-17/99/LE., dated the 3rd September 1999 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138-li/21-32/2007/LE., dated the 4th April 2008.

“Whether the action of the Management of M/s. Guru Gourang Press, ISCON, Nayapalli, Bhubaneswar in terminating the services of Shri Akhaya Kumar Sahoo, D.T.P. Operator, w.e.f. the 1st April 1998 is legal or justified, If not, what relief he is entitled to ?”

2. The case of the Second-Party Workman may briefly be stated thus :—

The Second-Party Workman was engaged under the Management w.e.f. the 15th September 1994 as a D.T.P. Operator and was discharging his duties in its Guru Gouranga Press. It is alleged that while the workman was working as such to the utmost satisfaction of the authority, suddenly he was refused employment w.e.f. the 1st April 1998. It is narrated in the claim statement that the workman was receiving a consolidated salary of Rs. 1800/- per month, which was much less than his entitled salary and when he demanded for implementation of the minimum wages; E.P.F. and E.S.I. facilities the

Management became annoyed and refused him employment with effect from 1st April 1998. According to him such refusal of employment amounts to termination of his service and due to non-compliance of the provisions of the Industrial Disputes Act, such termination of his service is illegal and unjustified one. In the circumstance, as aforesaid, the workman has prayed for his reinstatement in service with full back wages.

3. Challenging the maintainability of the reference, the Management filed its written statement. The claim of the workman is resisted by the Management on the following grounds:—

- (i) there has been no termination of service of the workman, as alleged and on the own saying the account of the workman was settled till 31st March 1998 and an experience certificate was issued for his future career;
- (ii) The workman has voluntarily left the organization of the First Party and is serving under the Orissa Trust of Technical Education and Training, Rasulgarh w.e.f. the 1st April 1998; and
- (iii) the present litigation has been filed by workman with a *mala fide* intention to harass the Management and therefore, the claim advanced may be rejected.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

Issues

- 1. Whether the action of the Management of M/s. Guru Gouranga Press, ISCON, Nayapalli, Bhubaneswar in terminating the services of Shri Akshya Kumar Sahoo, D.T.P. Operator, w.e.f. the 1st April 1998 is legal or justified ?
- 2. If not, what relief he is entitled to ?
- 5. To substantiate their respective stand, the workman while examined himself and brought on record documents which have been marked as Exts.1 to 6. The Management also examined one witness on its behalf and proved six documents which have been marked as Exts.A to F.
- 6. Before entering into the merit or otherwise of the claim, it is first to be determined as to whether the organization of the first party is an 'industry' within the meaning of Section 2(j) of the Industrial Disputes Act as much emphasis is put by the Management on the point. In this connection, the contention of the workman is that the first party is carrying

out commercial activities, in as much as, it keeps orders from the private parties for printing magazines, levels, cover pages etc. and from the profits arrived therefrom it pays the salary to its employees and meets the expenses towards maintenance of the Press. The workman deposed with reference to Exts.1 to 6, which are printed papers/materials of different organisations, that upon orders of the private parties such documents were printed by the Management. The Management though contended with vehemence that the reference of the dispute is not maintainable as against it, but has failed to lead any convincing evidence on the issue. So, upon perusing the documentary evidence available on record, the evidence of W.W.No.1 and the verdict of the Hon'ble Supreme Court in Bangalore Water Supply and Sewerage Board's case, reported in AIR 1978 S.C. Page-548, it is held that the organization of the first party is coming well within the purview of 'industry' as defined in Section.2(j) of the Industrial Disputes Act and accordingly it is held that the reference is maintainable in the present forum.

7. Next it is to be seen whether there has been a refusal of employment, as alleged by the workman or the workman on his own accord left the organization of the first party on getting better prospect elsewhere.

W.W.No.1 in his examination in chief has deposed that although he had rendered continuous service under the Management for the period from the 15th September 1994 to the 31st March 1998 and during such continuance he was never chargesheeted for any misconduct, yet the Management refused him employment w.e.f. the 1st April 1998 without complying with the provisions of the Industrial Disputes Act. In his cross-examination, however in Para-6 he has admitted to have received his salary from the Management up to March, 1998. Further he has also admitted to have got an experience certificate from the Management. It also stands admitted by the workman in his cross-examination that Ext.B is the copy of his application submitted to the Vice-Chairperson, I.C.R.C., I.R.C. Village, Bhubaneswar. A perusal of Ext.B reveals that the workman after having joined a new organization on the 1st April 1998 submitted the application for enhancement of his salary. On the face of the aforesaid evidence readwith Ext.B therefore, it cannot be believed that there has been a refusal of employment to the workman by the Management w.e.f. the 1st April 1998. Ext.E, the copy of the letter of the Orissa Trust of Technical Education & Training addressed to the first party is yet another documentary proof produced by the Management which confirms the fact that the workman after having left the organization of the Management joined their Institution on the 1st April 1998.

8. In view of the discussions made above, it is made clear that there has been no refusal of employment to the workman by the Management on the 1st April 1998, as alleged and therefore, it cannot be said that the Management has contravened the provisions of Industrial Disputes Act.

9. In the result, it is held that the workman has left the services of the Management voluntarily and there having no termination of service of the workman w.e.f. the 1st April 1998, as alleged by the workman, the action of the Management cannot be held to be illegal or unjustified. The workman is not entitled to any relief in the present dispute.

Dictated and corrected by me.

P. C. Mishra, O.S.J.S. (Sr.Branch)

03-02-2009

Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

P. C. Mishra, O.S.J.S. (Sr.Branch)

03-02-2009

Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

By order of the Governor

K. C. BASKE

Under-Secretary to Government